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tax planning *and*
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tax-exempt organizations
sixth edition

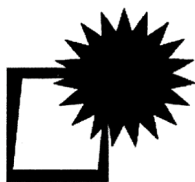
Rules, Checklists, Procedures

2022 CUMULATIVE SUPPLEMENT

Jody Blazek

WILEY

tax planning *and*
compliance *for*
tax-exempt organizations



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Preface

The IRS's Tax Exempt and Government Entities (TE/GE) Division on an ongoing basis seeks to meet its responsibility to provide the best possible service to taxpayers as it administers its obligation to enforce the rules set forth in the federal tax code. Its role ranges from designing forms to writing instructions and memoranda to explain policies and procedures for filing tax returns, monitoring filing deadlines, and managing a trained staff to administer the tax filing system.

This supplement begins with a worrisome notice from IRS concerning their inability to promptly process and review materials taxpayers dutifully prepared on paper and properly sent to them in a timely manner according to deadlines they set:

The IRS encourages [means requires] organizations to file these forms electronically. If you file Form 990-EZ on paper, you may receive a prematurely-issued CP259A notice of non-filing. If you file Form 8868 on paper, there may be a delay in receiving a CP211A notice confirming approval of your extension request. If you filed your return or extension request on paper, you do not need to take any further action. Please don't file a second return or contact the IRS about the status of your filing. We appreciate your patience.

When it is urgent that IRS approval of tax-exemption as issued on the determination letter be available to a grantee or other interested party, the organization might consider requesting expedited consideration of qualification by the IRS.

Qualifications of Tax-Exempt Organizations

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Distinguishing Characteristics of Tax-Exempt Organizations

§ 1.4 Role of the Internal Revenue Service

§ 1.8 Developments Responding to COVID-19

(a) CARES and SECURE Acts

(b) IRS Delays in Tax Payment and Return Due Dates

§ 1.4 Role of the Internal Revenue Service

p. 15. Add at end of paragraph at top of page:

In preparing this supplement, I found that rereading the instructions gave me facts and IRS directions I was unaware of or had forgotten. Accordingly, the following is a listing of the items I needed to carefully consider as I review returns prepared by others in my office.

The instructions for 990-PF for 2020 begin with the following “What’s New” section:

- ***Reduced tax on net investment income.*** The Taxpayer Certainty and Disaster Tax Relief Act reduced the 2 percent Internal Revenue Code section 4940(a) excise tax on net investment income of private foundations to 1.39 percent effective for tax years beginning after December 20, 2019. This legislation also repealed Internal Revenue Code section 4940(e), which from January 1, 1985, through December 20, 2019, provided a reduced 1 percent tax when its qualifying distributions for that year exceeded the fair market value of its investment assets multiplied by the private foundation’s average percentage payout for the prior five years. The 2020 990-PF form still contained Part V, Reduced Tax on Net Investment Income, which was no longer used and which the instructions said was not necessary to complete.

Other various sections are also included in the instructions:

- ***Electronic filing reminder.*** For tax years beginning on or after July 2, 2019, the Taxpayer First Act, section 3101 of P.L. 116-25, requires that returns by exempt organizations be filed electronically. Accordingly, you must file the return electronically for tax years beginning in 2020.

- *Reporting standard for net assets updated.* Part II of Form 990-PF was updated to reflect the Financial Accounting Standard Board's (FASB's) reclassification of net assets into two classes, net assets without donor restrictions and net assets with donor restrictions. For more information, see *Part II. Balance Sheets, Lines 24 Through 30, Net Assets or Fund Balances*.
- *Pub. 15-T.* Pub. 15-T, Federal Income Tax Withholding Methods, contains the federal income tax withholding tables that were previously provided in Pubs. 15 and 15-A and explains how to use the tables.
- *Exception from the excise tax on excess business holdings.* Section 4943(g) provides an exception from the excise tax on excess business holdings for certain independently operated enterprises whose voting stock is wholly owned by a private foundation. For more details, see *Part VII-B, Line 3a*.
- *Initial Form 990-PF by former public charity.* If you are filing Form 990-PF because you no longer meet a public support test under section 509(a)(1) and you haven't previously filed Form 990-PF, check *Initial return of a former public charity* in Item G of the heading section on page 1 of your return. Before filing Form 990-PF for the first time, you may want to go to IRS.gov/EO for the latest information and filing tips to confirm you are no longer a publicly supported organization.
- *Automatic revocation.* Most tax-exempt organizations, other than churches, are required to file an annual Form 990, 990-EZ, or 990-PF with the IRS, or to submit a Form 990-N e-Postcard to the IRS. If a tax-exempt private foundation fails to file an annual return as required for three consecutive years, it will automatically lose its tax-exempt status and will become a taxable private foundation. See *M. Penalty for Failure to File Timely, Completely, or Correctly*.
- *IRS e-Services* make taxes easier. Now more than ever before, businesses can enjoy the benefits of filing and paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, the IRS offers you convenient programs to make taxes easier.
 - You can e-file your Form 990-PF, Form 940, and 941 employment tax returns, and Forms 1099 and other information returns. Visit [IRS.gov/Charities-Non-Profits/Annual-Reporting-and-Filing](https://www.irs.gov/Charities-Non-Profits/Annual-Reporting-and-Filing) for details.
 - You can pay taxes online or by phone using the free Electronic Federal Tax Payment System (EFTPS). Visit [EFTPS.gov](https://www.eftps.gov) or call 800-555-4477 for details. Electronic Funds Withdrawal (EFW) from a checking or savings account is also available to those who file electronically.
 - *Don't include social security numbers on publicly disclosed forms.* Because the IRS is required to publicly disclose the organization's annual information returns, social security numbers shouldn't be included on this form. Documents subject to disclosure include schedules and attachments filed with the form
 - *Form 990-PF* is an annual information return that must be filed by the following:
 - Exempt private foundations (section 6033(a), (b), and (c)).
 - Taxable private foundations (section 6033(d)).
 - Organizations that agree to private foundation status and whose applications for exempt status are pending on the due date for filing Form 990-PF.

- Organizations that claim private foundation status, haven't yet applied for exempt status, and whose application isn't yet untimely under section 508(a) for retroactive recognition of exemption.
- Organizations that made an election under section 41(e)(6)(D)(iv).
- Private foundations that are making a section 507(b) termination.
- Include on the foundation's return the financial and other information of any disregarded entity owned by the foundation. See Regulations sections 301.7701-1 through 3 for information on the classification of certain business organizations, including an eligible entity that is disregarded as an entity separate from its owner (disregarded entity).
- *How to avoid filing an incomplete return.* Complete all applicable line items. Answer "Yes," "No," or "N/A" (not applicable) to each question on the return. Make an entry (including a zero when appropriate) on all total lines. Enter "None" or "N/A" if an entire part doesn't apply.
- *Accounting Period.* File the 2020 return for the calendar year 2020 or fiscal year beginning in 2020. If the return is for a fiscal year, fill in the beginning and ending dates of the tax year in the spaces at the top of the return.

The return must be filed on the basis of the established annual accounting period of the organization. If the organization has no established accounting period, the return should be on the calendar-year basis.

For an initial or final return or for a short tax year resulting from a change in accounting period, the 2020 form may also be used as the return for a short period (less than 12 months) ending November 30, 2020, or earlier. The 2020 form may also be used for a short period beginning after November 30, 2020, and ending before December 31, 2021 (not on or after December 31, 2021). When doing so, provide the information for designated years listed on the return, other than the tax year being reported, as if they were updated on the 2020 form. For example, provide the information in Part V, line 1, for the tax years 2016–2020, rather than for the printed years, 2015–2019.

In general, to change its accounting period, the organization must file Form 990-PF by the due date for the short period resulting from the change. At the top of this short period return, write "Change of Accounting Period." If the organization has previously changed its accounting period within the 10-calendar-year period that includes the beginning of the short period resulting from the current change in accounting period, and it had a Form 990-PF filing requirement at any time during that 10-year period, it must also file Form 1128, Application for Change in Accounting Method, with the short-period return. See Rev. Proc. 85-58, 1985-2 C.B. 740, 1985-18 I.R.B. 5.

- *Accounting Methods.* Generally, you should report the financial information requested on the basis of the accounting method the foundation regularly uses to keep its books and records. *Exception.* Complete Part I, column (d), on the cash receipts and disbursements method of accounting.

I commend the IRS for the above list and decided to also include any news items from the Form 990 instruction posted on January 27, 2021, that pertained to Tax-Exempt Organizations issues not mentioned above. Some items are displayed in an abbreviated version for repeated information. One might look for release of the 2022 version.

One might also benefit from the following Form 990 Tips and Cautions:

Certain Form 990 filers must file electronically. See General Instructions, Section E. When, Where, and How To File, later, for who must file electronically.



Reminder: Don't Include Social Security Numbers on Publicly Disclosed Forms. *Because the filing organization and the IRS are required to publicly disclose the organization's annual information returns, social security numbers shouldn't be included on this form. By law, with limited exceptions, neither the organization nor the IRS may remove that information before making the form publicly available. Documents subject to disclosure include statements and attachments filed with the form. For more information, see Appendix D.*



Organizations that have \$1,000 or more for the tax year of total gross income from all unrelated trades or businesses must file Form 990-T, to report and pay tax on the resulting unrelated business taxable income (UBTI), in addition to any required Form 990, 990-EZ, or 990-N.



An organization may not file a "consolidated" Form 990 to aggregate information from another organization that has a different EIN, unless it is filing a group return and reporting information from a subordinate organization or organizations, reporting information from a joint venture or disregarded entity (see Appendix E, Group Returns—Reporting Information on Behalf of the Group, and Appendix F, Disregarded Entities and Joint Ventures—Inclusion of Activities and Items).



An organization that has filed a letter application for recognition of exemption as a qualified nonprofit health insurance issuer under section 501(c)(29), or plans to do so, but hasn't yet received an IRS determination letter recognizing exempt status, must check the "Application pending" checkbox on the Form 990, Item B, page 1.



Subordinate organizations *in a group exemption which are included in a group return filed by the central organization for the tax year shouldn't file a separate Form 990, Form 990-EZ, or Form 990-N for the tax year.*



A public charity described in section 170(b)(1)(A)(iv), 170(b)(1)(A)(vi), or 509(a)(2) that isn't within its initial 5 years of existence should first complete Part II or III of Schedule A (Form 990 or 990-EZ) to ensure that it continues to qualify as a public charity for the tax year. If it fails to qualify as a public charity, then it must file Form 990-PF rather than Form 990 or Form 990-EZ, and check the box for "Initial return of a former public charity" on page 1 of Form 990-PF.



Depending on the specific accounting method change being requested, the taxpayer may be able to request "automatic" consent. This means that as long as the taxpayer follows the applicable procedures, the taxpayer does not have to wait for formal approval by the IRS before applying the new accounting method. See Rev. Proc. 2019-43, 2019-48 I.R.B. 1107, or its successor, for a list of accounting method changes that generally qualify for automatic consent.



Generally, a taxpayer, including a tax-exempt entity, will recognize a positive section 481(a) adjustment (such as, an increase to income) ratably over 4 tax years and will recognize a negative section 481(a) adjustment in full in the year of change. See Rev. Proc. 2015-13, or its successor.



See Pub. 538, *Accounting Periods and Methods*, and the instructions for Forms 1128 and 3115, about reporting changes to accounting periods and methods.



Properly distinguishing between payments to affiliates and grants and allocations is especially important if the organization uses Form 990 for state reporting purposes. If the organization uses Form 990 only for reporting to the IRS, payments to affiliated or national organizations that don't represent membership dues reportable as miscellaneous expenses on line 24 can be reported on either line 21 or line 1.

Business Activity Codes

The codes listed in this section are a selection from the North American Industry Classification System (NAICS) that should be used in completing Form 990, Part VIII, lines 2 and 11. If you don't see a code for the activity you are trying to categorize, select the appropriate code from the NAICS website at 2017 NAICS Census. Select the most specific six-digit code available that describes the activity producing the income being reported. Note that most codes describe more than one type of activity. Avoid using codes that describe the organization rather than the income-producing activity.

Glossary

The glossary has over 65 pages that include tax, accounting, titles and terms on the tax forms, and an amazing long list of items mentioned in the extensive instructions that themselves total 100 pages.

Before diving into new developments to pages of the sixth edition of *Tax Compliance for Tax-Exempt Organizations*, I'll share an excellent list of suggestions for protecting your data and computer from cyber terrorists.

The following tips were written by AICPA's Not-for-Profit Section:

9 cybersecurity tips for small not-for-profit organizations

Numerous studies have shown that over 90 percent of corporate breaches start with a phishing email. But don't let that statistic lead you to believe that you can strengthen your controls over email and be safe. Recent reports are indicating that fraudsters are now successfully using voice-generating artificial intelligence software to impersonate executives when perpetrating these crimes.

Unfortunately, far too many nonprofits do not have or know of a policy that identifies how their organization handles cybersecurity risk, equipment usage, and data privacy. Cybersecurity is a real concern that all types of organizations, including all types and sizes of not-for-profits, must address.

This article offers tips and best practices related to both the personal and the technical aspects of cybersecurity that even the smallest nonprofits can employ.

Promote organization-wide awareness

It is increasingly important for organizations and users to understand that the cybersecurity adversaries, also known as "bad actors," are after people. Bruce Schneier, a seasoned cybersecurity professional, said, "Amateurs hack systems, professionals hack people." Take spear phishing, for example, where bad actors send emails ostensibly from a trusted sender to get recipients to reveal confidential information.

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Every member of an organization is responsible for security. Take the time to educate users on this fact and make security part of your culture:

- Provide continual training.
- Hold lunch and learns.
- Post signs in the break room.
- Cover a security topic during team meetings.

There are limitless examples of cyber breaches on the Internet that you can discuss. It takes little effort to talk about security and doing so will save headaches in the long run.

Understand the latest social engineering techniques

Bad actors are getting better and better at using social engineering to get us to provide information or click on links to download malware. Phishing is by far the most common method, followed by email, text, and phone. The days of offering money from a bank in Nigeria are over. Bad actors are getting more sophisticated. They prey on human emotions and personalize messages to make them seem real.

Ask yourself if a request makes sense. If it doesn't, don't act on it. Ask someone's opinion (e.g., your IT service provider). Be especially careful on phones. It is difficult to decipher real-versus-fake on small screens. Links are also harder to verify on mobile devices, because they may not be fully visible without clicking on them.

Amp up your passwords and use multi-factor authentication

Have a unique, complex password for every system you use. If a bad actor cracks one username and password, they are likely to try other systems to see if they can get in with the same credentials and they can do this with amazing ease and speed. If you have trouble remembering multiple passwords, use a password manager to store them in a secure manner. NEVER store them in an Excel or Word file on your computer.

Use multi-factor authentication (MFA) as a second layer of defense whenever it is offered. MFA is when the application you are signing into texts you a code or asks you to log in to an app on your phone to get the most recent code to authenticate. This functionality has saved people from breaches many times, yet only 21 percent of nonprofits have their employees using MFA.

Important note: If you receive a request to enter a code and you aren't trying to log in, do not use it and change your password on that application immediately.

(Continued)